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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/689,035	10/12/2000	Joseph P. Tunney	47440-021000	6162

7590 07/29/2003

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EXAMINER

WINTER, GENTLE E

ART UNIT

PAPER NUMBER

1746

DATE MAILED: 07/29/2003

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/689,035

Applicant(s)

TUNNEY ET AL.

Examin r

Gentle E. Winter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 11 is/are rejected.
- 7) ☒ Claim(s) 2-10 and 12-19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
2. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).
3. Effective January 1, 1994, a registered attorney, or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).
4. Claims 1 and 11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 as it depends from claim 1 of U.S. Patent No. 6,443,166. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are drawn to a method of cleaning a container having at least one chemical therein, the application claim discloses that he

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chemical is anhydrous ammonia, the patent indicates that the chemical is gaseous at standard temperature and pressure. Both the application and the patent are drawn to adding an amount of heated nitrogen gas to the container to mix with the chemical creating a nitrogen gas/chemical mixture; and thereafter providing a flare to incinerate the nitrogen gas/chemical mixture; and venting the nitrogen gas/chemical mixture to the flare.

5. Claims 1 and 11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/689150. Although the conflicting claims are not identical, they are not patentably distinct from each other because both are essentially structurally the same, the difference is that the allowed application indicate indicates that LP gas is present in lieu of anhydrous ammonia. Since the claims are otherwise the same and since the properties of LP gas and nitrogen as compared to anhydrous ammonia and nitrogen are substantially similar the claims are considered to be obvious variants of one another.

6. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103--Withdrawn

7. Claims 1-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5,168,709 to Bombard in view of EP 552750A to Rudat.

8. Bombard relies on pumps, valves as mechanical means for controlling cleaning fluid (heated nitrogen) flow. The amended independent claims, claim a system that is

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meaningfully simpler than that of the combination of Bombard and Rudat. Additionally, the presently claimed invention contemplates a batch type method; see e.g. the “injecting” step and the “repeating” step. Bombard apparently discloses a continuously circulating system that does not include the claimed “batch type” system. The current system, at least potentially, allows for complete saturation of the heated nitrogen before the heated nitrogen is sent to the flare. It is also noted that the current system, with its lack of mechanical means in matters related to heated nitrogen injection and the venting of the anhydrous ammonia/nitrogen mixture to the flare, seemingly allows for simple and robust cleaning system. The simplicity, especially with respect to anhydrous ammonia, is meaningful in the context fault tree analysis. Fewer mechanical parts translate into fewer potential sources of error.

9. It is noted, that the prior art of record is silent with respect to claimed aggregation each and every element of the instantly claimed invention. However, the aggregate parts are disclosed. Specifically, the concept of using a tank to supply gas to a system for cleaning or drying is well known in the art, such systems generally rely on a plurality of valves see for instance United States Patent No. 5,850,853 disclosing a that a compressor, a pressurized air storage tank, a nitrogen gas cylinder, a hydraulic pump, or other sources may be used as the fluid supply source. This reference is provided to *inter alia* show that pressurized nitrogen may be from a plurality of sources including a tank or a pump. Further, as indicated, the prior art of record discloses the interchangeability of flares and condensers as well as the motivation for selecting one system over another. However none of these systems disclose the combination of a batch type process that is carried out

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without mechanical means. As such the present invention is considered to be patentable because the present invention provides a material simplification over the cleaning methods of prior art of record.

Allowable Subject Matter

10. Claims 2-10 and 12-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gentle E. Winter whose telephone number is (703) 305-3403. The examiner can normally be reached on Monday-Friday 7:00-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (703) 308-4333. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications. The direct fax number for this examiner is (703) 746-7746.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Gentle E. Winter
Examiner
Art Unit 1746

ALEXANDER MARKOFF
PRIMARY EXAMINER

July 26, 2003